

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PHILLIP ANTHONY PETERSON,

Petitioner,

No. CIV S-02-1720 FCD DAD P

vs.

ERNEST ROE, Warden, et al.,

Respondent.

ORDER

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's September 21, 2006, denial of his application for a writ of habeas corpus. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The certificate of appealability must “indicate which specific issue or issues satisfy” the requirement. 28 U.S.C. § 2253(c)(3).

A certificate of appealability should be granted for any issue that petitioner can demonstrate is “debatable among jurists of reason,” could be resolved differently by a different


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1 court, or is “adequate to deserve encouragement to proceed further.” Jennings v. Woodford,
2 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

3 Petitioner has made a substantial showing of the denial of a constitutional right in
4 the following issues presented in the instant petition: (1) whether his conviction for second
5 degree murder is supported by sufficient evidence; (2) whether his right to due process was
6 violated by jury instruction error; (3) whether his trial and appellate counsel rendered ineffective
7 assistance; (4) whether the trial court erred in denying his motion for change of venue; (5)
8 whether the trial court erred in failing to hold a Marsden hearing; (6) whether the trial judge
9 erred in vouching for the credibility of a prosecution witness and in discrediting a defense
10 witness; (7) whether his constitutional rights were violated by omissions in the state court
11 record; (8) whether his conviction should be overturned because he is factually innocent; and (9)
12 whether his trial proceedings were rendered fundamentally unfair because the trial judge and one
13 of the defense attorneys had a conflict of interest.

14 Accordingly, IT IS HEREBY ORDERED that a certificate of appealability is
15 issued in the present action.

16 DATED: November 29, 2006.

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19 FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE
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25 ¹ Except for the requirement that appealable issues be specifically identified, the
26 standard for issuance of a certificate of appealability is the same as the standard that applied to
issuance of a certificate of probable cause. Jennings, at 1010.